



ENTERED
02/07/2014

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE)	
)	
MANZOOR A. MEMON,)	CASE NO. 13-32851-H3-7
)	
Debtor,)	
)	
EVA ENGELHART, TRUSTEE,)	
)	
Plaintiff,)	
v.)	ADV. NO. 13-3301
)	
MANZOOR A. MEMON and)	
AMBER M. MEMON,)	
)	
Defendants.)	
)	

REPORT AND RECOMMENDATION TO THE DISTRICT COURT
FOR WITHDRAWAL OF REFERENCE

The bankruptcy court has held a status conference with respect to the instant adversary proceeding. In the complaint, Plaintiff, the Chapter 7 Trustee, seeks avoidance and recovery of alleged fraudulent transfers by Defendant Manzoor Memon, the Debtor, and his non-debtor spouse, Defendant Amber Memon, of multiple parcels of real property to a living trust, and thereafter to Amber Memon, separately, under Sections 544, 548, and 550 of the Bankruptcy Code. Plaintiff also seeks revocation of the trust, an order directing the Defendants to turn over the parcels to the bankruptcy estate under Section 542 of the Bankruptcy Code, and an order foreclosing an alleged judicial lien.

Both defendants in the instant adversary proceeding filed jury demands. Neither jury demand was timely, under Rule 38(b) of the Federal Rules of Civil Procedure. Thus, pursuant to Rule 38(d), the jury demands have been waived.

Defendant Amber Memon has nonetheless argued that she is entitled to a jury trial, pursuant to Rule 39(b) of the Federal Rules of Civil Procedure. Manzoor Memon joins in this request. Amber Memon does not consent to a jury trial in the bankruptcy court.

The cause of action stated in the complaint for turnover under Section 542 of the Bankruptcy Code is not a proper use of Section 542, because a turnover complaint is not to be used to liquidate a disputed claim. See Trefny v. Bear Stearns Sec. Corp., 243 B.R. 300 (S.D. Tex. 1999).


With respect to the remaining causes of action, it appears that the determination of whether to permit a jury trial is discretionary, with the court to consider (1) whether the case involves issues which are best tried to a jury; (2) whether granting the motion would result in a disruption of the court's schedule or that of an adverse party; (3) the degree of prejudice to the adverse party; (4) the length of the delay in having requested a jury trial; and (5) the reason for the movant's tardiness in requesting a jury trial. Daniel International Corp. v. Fischbach & Moore, Inc., 916 F.2d 1061 (5th Cir. 1990). This court does not yet have evidence sufficient to determine these

issues.

Under 28 U.S.C. § 157(e), a bankruptcy judge designated by the District Court to do so, may conduct a jury trial if the parties expressly consent.

In light of the discretion of the court to determine whether a jury trial should be granted, and Amber Memon's not having consented to a jury trial in the bankruptcy court, this court respectfully recommends to the District Court that the reference be withdrawn.

Signed at Houston, Texas on this 6
day of Feb, 2014.


LETITIA Z. PAUL
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES DISTRICT COURT
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Plaintiff,)	
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)	
MANZOOR A. MEMON and)	
AMBER M. MEMON,)	
)	
Defendants.)	
)	

ORDER WITHDRAWING REFERENCE

Based upon the Bankruptcy Court's Report and
Recommendation to the District Court for Withdrawal of Reference,
it is

ORDERED that the reference is withdrawn.

SIGNED at Houston, Texas on this _____ day of

_____, 2014.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
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AMBER M. MEMON,)	
)	
Defendants.)	
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NOTICE OF REPORT AND
RECOMMENDATION FOR WITHDRAWAL OF REFERENCE

PLEASE TAKE NOTICE that the enclosed Report and
Recommendation to United States District Court for Withdrawal of
Reference has been filed in the above matter, and is herewith
served upon you.

David J. Bradley, Clerk

Dated: _____, 2014

By: _____